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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/384,504	08/27/1999	JOHN W. MARSHALL	112025-0166	7925

7590 06/01/2004  
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Cesari and McKenna, LLP  
88 Black Falcon Avenue  
Boston, MA 02210

EXAMINER

BRODA, SAMUEL

ART UNIT	PAPER NUMBER
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2123

DATE MAILED: 06/01/2004

24

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/384,504

Applicant(s)

MARSHALL ET AL.

Examiner

Samuel Broda

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,9-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3,5-7,9-11,13-15 and 17 is/are allowed.
- 6) ☒ Claim(s) 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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1. This communication is in response to Applicants' Preliminary Amendment mailed on 3 May 2004. Claims 1-3, 5-7, 9-11, and 13-17 are pending.

***Claim Rejections - 35 U.S.C. § 112, Second Paragraph***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2.1 Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

2.2 Claim 16 recites the limitations "said first portion" in line 3, "said second portion" in line 6, and "said remaining portion" in line 7. There is insufficient antecedent basis for these limitations in the claim. It is unclear whether Applicants intend to split the system into two or more distinct portions.

***Applicants' Argument***

3. Regarding the rejection under Section 112, first paragraph, Applicants argue in the "Remarks" at pages 8-9 that "a person of ordinary skill in the art who understands Applicant's representation of the prior art in Fig. 4 and Fig. 6 can easily understand the changes made by

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Applicant as shown Fig. 1, Fig. 2, Fig. 3, and Fig. 5” and that the text descriptions in the Specification are sufficient to guide one who understands the prior art shown in Fig. 4 and Fig. 6.

***Examiner's Reply***

4. Applicants' argument is persuasive and the rejection under Section 112, first paragraph, is removed.

However, a review of the claims indicates that claim 16 has antecedent basis problems that were not previously spotted by the Examiner.


***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Samuel Broda, whose telephone number is (703) 305-1026. The Examiner can normally be reached on Mondays through Fridays from 8:00 AM – 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kevin Teska, can be reached at (703) 305-9704. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist, whose telephone number is (703) 305-3900.

  
**SAMUEL BRODA, ESQ.**  
**PRIMARY EXAMINER**